

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BENJAMIN MORDUKHAEV, ROBERT DYCE, MARC
BUTCHER, MUSTACH ALI, JORGE AVILA, IGOR
MODIN and MOHAMMAD BUTT, individually and on
behalf of all others similarly situated,

Plaintiffs,

-Against-

09-CV-5149 (SHS)(RLE)

MATTHEW DAUS, RAYMOND SCANLON,
CARMENA SCHWECKE, THE NEW YORK CITY
TAXI AND LIMOUSINE COMMISSION, and THE
CITY OF NEW YORK,

Defendants.

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CORRECTED RULE 56.1 STATEMENT

**This Rule 56.1 Statement corrects the statement
previously submitted by adding the record citations that
had been omitted inadvertently, and by omitting an
paragraph inadvertently included. The substance of the
initial and corrected documents is identical.**

1. Like all city agencies, the TLC, when exercising its rulemaking authority, must proceed in accordance with the City Administrative Procedure Act, another chapter of the City Charter. NYC Charter §§ 1041-1046; *see generally Padberg*, 203 F. Supp. 2d at 267-68. For an agency to enact a rule or to amend an existing rule, CAPA § 1043 requires that agency to issue a public notice of the proposed rule or amendment and to hear comments. This notice-and-comment provision applies not just to rules labeled as such but to (1) “any statement or communication of general applicability that ... implements or applies law or policy;” (2) to “standards which if violated may result in a sanction or penalty;” and (3) to “standards for the issuance, suspension or revocation of a license or permit.” *Id.* § 1041(5).

2. Defendants have adopted no rule altering the section 19-505 licensing scheme.

3. But when plaintiffs applied for new licenses, the TLC did require them to appear for so-called “fitness hearings.”

4. After such hearings, a TLC judge recommended and Chairman Daus ruled on whether they would be licensed. PX 5.

5. As the TLC’s prosecutor in fitness hearings admitted, “Fitness hearings don’t involve rule violations.” Hardekopf 62. Rather, they involve unwritten or unpublished policies arbitrarily and capriciously enforced by Chairman Daus according to his personal view of the applicant’s merit.

6. As a matter of practice, the TLC requires former license holders applying for a new license to appear for a “fitness hearing.”

7. This practice is alluded to by TLC Rule 8-15, part of the “Adjudications” chapter of the TLC Rules. This rule provides for a hearing where the commission “believes that a licensee or applicant for a license (hereinafter referred to as ‘respondent’) does not meet or does not continue to meet the qualifications for licensure.” Rule 8-15 further provides that a TLC ALJ shall issue a recommended decision determining the respondent’s fitness to possess a license.

8. “If the respondent is or has ever been a licensee,” the rule states that the recommendation shall be issued to the Chairperson. If the applicant has never held a TLC license, the rule states that the recommendation is issued to the Deputy Commissioner for Licensing, his designee, or any other person designated by the Chairperson.

9. In either event, “The Chairperson, Deputy Commissioner for Licensing, or designee, may accept, reject or modify said Recommendation.” The decision of the reviewing executive “shall constitute the final determination of the Commission.” TLC Rule 8-15.

10. The TLC’s actual practice is again somewhat different from the rule: It submits the ALJ’s recommendations to the deputy commissioner for licensing (currently Gary Weiss) even if the applicant *was* previously licensed and his prior license was surrendered or allowed to lapse. Mr. Weiss generally defers to the ALJ who hears the testimony and the evidence, and he is quite likely to approve an application. Exh. 1, Response #3; Hardekopf 142-45.

11. If the applicant’s previous license was revoked, however, its ALJ’s recommendation goes to Chairman Daus. In the chairman’s case, he nearly always accepts an ALJ’s recommendation to deny a license. But he generally *rejects* an ALJ’s recommendation to grant a license. *See* n. 8, below.

12. As a result, while there is no rule of law stating that reapplications are to be treated differently than other applications, Chairman Daus, acting as judge without review imposes his own unpublished standard.

13. The chairman denies reinstatement applications in the vast majority of cases. Indeed, according to a sworn statement by the TLC, in one recent 18-month period, 138 post-revocation applications resulted in fitness hearings. Of these 138 applications, 58 received positive recommendations from the ALJ. In the 58 cases where the ALJ recommended licensure, Chairman Daus rejected the ALJ's recommendation and denied the license 48 times or 83% of the time. TLC Response to Interrogatories, Response #2, at Exh. 1.¹ Thus for this period, the applicant's overall odds of reinstatement were 7.2%.² (This data covered yellow taxi licenses only; it excluded for-hire-vehicle licenses.)

14. TLC judges are routinely instructed about TLC policies (including unwritten policies) on an *ex parte* basis. The *ex parte* instructions come in the form of informal tutelage and formal instructions. *See* items 15-18 below.

15. The TLC's administrative arm also issues *ex parte* directives by and through the dissemination of manuals written for TLC judges. These manuals are not available to taxi drivers, their lawyers or the public. Daus N120; Coyne 150-51.

16. The TLC also provides *ex parte* direction through the informal training of its judges. Fioramonti N50; Gottlieb 18, 31. The ALJs, of course, readily admit they are trained to follow the manual. Coyne 161, 172, 181, 192; Fioramonti 29, 62, 72; Bonina 72, 75.

17. To cite just one example, Thomas Coyne, the former deputy chief TLC ALJ in charge of fitness hearings, testified that he trained ALJs to consider the manual binding and to make it their "Bible." Coyne 116, 181

18. In 2000, the TLC disseminated an internal manual to its ALJs on which Matthew Daus was listed as the first of many authors. (Mr. Daus was the agency's general counsel at the time). PX 3.

19. The 2000 TLC ALJ Manual³ lists the "cases where a [fitness] hearing is required." *See* TLC ALJ Manual re Fitness Hearings, p. 4, PX 3). No such hearing requirement (and no such list) appears in any published TLC Rule.

¹ All Exhibits unless otherwise noted are to the Declaration of Daniel L. Ackman, sworn to Sept. 10, 2009.

² A review of TLC records by plaintiffs' counsel of TLC records provided in response to a Freedom of Information Law Request made by Peter Mazer, Esq., a former general counsel of the TLC indicates somewhat different totals, but similar percentages. In the six-month period between May 1 and Nov. 30, 2007, Chairman Daus issued 239 letter rulings. In those 239 cases, the TLC ALJs recommended granting the license 92 times. But of those 92 cases, the chairman rejected the recommendation and denied the license 64 times. In the 147 cases where the ALJ recommended denying the license, the chairman agreed every time. Ackman Decl. ¶ 3. Representative samples of Chairman Daus's rulings are at Exhibit 7.

³ Like all TLC ALJ Manuals, the 2000 manual was never made available to taxi drivers, their lawyers or to the public. Plaintiffs' counsel obtained a copy through discovery in another action. The 2000 manual was superseded in 2007 by a new manual, but many of the directives of the old manual survive as policy because of how TLC judges are trained or because Chairman Daus, the ultimate arbiter in fitness cases, still adheres to the policies he included in the old manual, as evidenced by his rulings.

20. The manual also states that any applicant who has been convicted of driving while ability impaired by alcohol or drugs (a traffic infraction) or any applicant convicted of driving while under the influence of alcohol or drugs (a misdemeanor) shall not be approved for a license unless he has completed a state approved drunk driving program and “that at least five years have passed since the offense date.” *See* TLC ALJ Manual p. 9, PX 3. This five-year-wait policy likewise appears in no public law and was not enacted by either the TLC commissioners pursuant to CAPA or the City Council.

21. The unpublished TLC ALJ Manual further states that applicants whose licenses were previously revoked should be “closely scrutinize[d].” It adds: “Depending upon the grounds for the prior revocation, the licensee would have to unequivocally demonstrate that he is remorseful, that an adequate amount of time has elapsed since the offense occurred, and that he has been rehabilitated.” TLC ALJ Manual p. 16, PX 3.

22. This remorse-and-rehabilitation requirement is the chairman’s alone: it appears in no public law—not in the Code and not in TLC Rules.

23. This policy also reverses the CAPA’s requirement that the burden of proof falls on the TLC as the party initiating the hearing. Instead, the burden is imposed on the applicant, who must prove his compliance with an unenacted decree and a capricious remorse-and-rehabilitation standard.

24. The plaintiffs in this action, representing hundreds of others similarly situated, are all formerly licensed taxi drivers whose licenses were revoked in a variety of grounds.

25. Mr. Mordukhaev, a taxi driver for 21 years, had his license revoked following a hearing at which his accuser did not appear and after which he was found guilty of overcharging a passenger by \$24. PX 4.

26. Mr. Butcher, a taxi driver for 24 years, had his license revoked after the TLC determined he had failed a drug test. PX 4.

27. Mr. Modin, a taxi driver for five years, had his license revoked after the TLC determined he had doctored a drug test sample. PX 4.

28. Mr. Ali and Mr. Avila, cabbies for eight years and seven years, respectively, had their licenses revoked base on the TLC’s unpublished policy concerning convictions for driving while ability impaired, a traffic infraction.⁴ PX 4.

⁴ TLC Rule 2-20 provides for revocation where a taxi driver is found guilty of driving his taxi while impaired by alcohol or drugs. There is, however, no TLC rule and no statute that provides for revocation based on a DWAI or DUI conviction where the infraction occurred when the driver was off-duty. The legality of the TLC’s unpublished policy is currently *sub judice* in *Rothenberg et al. v. Daus et al.*, No. 08-CV-00567 (SHS)(RLE), a related case.

29. Mr. Dyce's license was revoked in response to a misdemeanor conviction for criminal possession of a forged instrument, the revocation based on the TLC's unpublished policy of revoking licenses of drivers convicted of a crime. PX 4.

30. All of these drivers applied for reinstatement at least once; Mr. Mordukhaev, Mr. Modin and Mr. Butt each reapplied twice. In each case, the TLC summoned the plaintiff to a "fitness hearing" even though in no case did the TLC allege that the applicant had not met the Section 19-505 standards. PX 7.

31. In every notice of hearing, the TLC failed to supply the notice that is legally required. The notices of hearing did make clear, however, that the burden of proof would be on the applicant, a stark violation of CAPA § 1046(c)(2), which places the burden on the agency. PX 7.

32. In each case, except Mr. Ali's, at least one TLC ALJ recommended the license be granted. PX 3. But each time, Chairman Daus rejected the application and denied the license nonetheless. PX 5.

33. Chairman Daus typically cited as the putative grounds for denial the lack of "evidence of rehabilitation" (Mordukhaev, Dyce, Avila, Butt) though there is nothing in any law requiring a driver to prove rehabilitation. (Nor is there anything indicating how rehabilitation might be proven.) PX 5.

34. Alternatively, the chairman cited his view that the applicant "could not be trusted" to follow TLC rules (Butcher, Butt) or his view that the driver's past record was "poor" (Modin). PX 5.

35. The "trust" standard appears in no public law either. Nor is it clear how Mr. Daus makes his assessment of trustworthiness having never met the applicant and knowing little about him.

36. As for a driver's record, the Code and the rules both provide specific criteria concerning when a driver's TLC or DMV record is sufficiently "poor" to merit suspension or revocation. The chairman's subjective view is not a factor. Finally, in each and every case where he denied the application, Chairman Daus cited no statute and no TLC rule.

37. On or about August 25, 2008, the NYC Taxi and Limousine Commission (TLC) produced documents in response to a NY Freedom of Information Law request made by Peter Mazer, Esq., the former general counsel of the TLC. Those documents included 239 rulings by Chairman Daus on applications for a taxi license by applicants who had previously held such a license. Ackman Decl. ¶¶ 2-4.

38. I reviewed those documents, which were dated from May 1, 2007 through November 30, 2007. In that period, the documents show that Chairman Daus issued 239 letter rulings. In those 239 cases, the TLC ALJs recommended granting the license 92 times (38% of the cases). But of those 92 cases, the chairman rejected the recommendation and denied the license 64 times (70% of the cases where the ALJ

recommended approval). In the 147 cases where the ALJ recommended denying the license, the chairman agreed every time. *Id.*

39. The list of applicants and the resolution of their fitness hearings is as follows:

Applicant	Date of Letter	ALJ	Chairman	Applicant	Date of Letter	ALJ	Chairma
Abou-Deshesh, H	7/17/07	deny	deny	Mehar, H	11/15/07	grant	grant
Abouelella, K	7/17/07	deny	deny	Merchan, C	5/31/07	deny	deny
Abouzejd, S	10/31/07	deny	deny	Meza, M	10/18/07	grant	deny
Abreu, D	10/19/07	deny	deny	Mian, A.E.	9/6/07	grant	deny
Abreu, F	10/31/07	deny	deny	Michel, C	8/6/07	deny	deny
Abreu, J	11/2/07	deny	deny	Miller, R	8/29/07	deny	deny
Abreu, J	11/2/07	deny	deny	Mojica, V	10/30/07	deny	deny
Adahanafi, D	10/31/07	grant	deny	Molina, S	10/19/07	deny	deny
Agarunov, S	11/2/07	deny	deny	Momtaz, S	5/2/07	grant	grant
Agbai, E	6/22/07	grant	grant	Monatta, D	7/25/07	grant	grant
Ahmad, M	11/28/07	deny	deny	Moraitia, E	9/26/07	grant	deny
Ahmed, I	5/14/07	deny	deny	Morovejo, J	9/6/07	grant	deny
Aichouni, N	7/17/07	deny	deny	Moulhem, M	5/14/07	deny	deny
Alaev, A	5/14/07	deny	deny	Nasr, A	5/14/07	deny	deny
Alexandre, V	6/27/07	deny	deny	Nasr, M	8/21/07	deny	deny
Ali, M	7/25/07	grant	grant	Ndiaye, M	5/31/07	deny	deny
Almaweri, H	5/15/07	grant	grant	Nunez, R	7/17/07	grant	grant
Andre, J	10/19/07	deny	deny	Oad, M	10/30/07	deny	deny
Bah, M	5/15/07	grant	deny	Onofre, F	6/22/07	grant	grant

Barrera, C	11/2/07	grant	deny	Ovalle, Y	10/19/07	deny	deny
Barry, A	10/18/07	grant	deny	Owusu, G	5/1/07	deny	deny
Batista, T	7/17/07	deny	deny	Pervez, S	10/19/07	deny	deny
Beharry, G	11/2/07	deny	deny	Pierre, Y	6/27/07	deny	deny
Bejaran, F	10/31/07	deny	deny	Pisfi, Jl	11/8/07	grant	deny
Belal, A	11/28/07	deny	deny	Plange, A	8/30/07	deny	deny
Bhuiyan, M	11/15/07	grant	grant	Popoola, A	10/18/07	grant	deny
Bicane, R	6/27/07	deny	deny	Prybyszews ki, A	9/4/07	grant	grant
Bobin, K	5/14/07	deny	deny	Quirola, B	5/14/07	grant	deny
Brown, L	11/28/07	deny	deny	Qurashi, M	5/31/07	grant	grant
Brown, R	5/1/07	grant	deny	Rahman, A	7/11/07	deny	deny
Brown, W.C.	10/18/07	grant	grant	Rajapa, B	9/7/07	grant	deny
Burdie, G	5/31/07	deny	deny	Ramadane, M	10/23/07	grant	deny
Butt, D	10/23/07	grant	deny	Ramirez, A	10/31/07	deny	deny
Cabral, P	5/14/07	deny	deny	Ramirez, R	11/30/07	deny	deny
Caseres, J	9/27/07	deny	deny	Rathore, N	11/15/07	grant	grant
Castellano, A	8/29/07	deny	deny	Rayman, S	11/30/07	deny	deny
Castillo, D	10/31/07	deny	deny	Restrepo, F	9/27/07	deny	deny
Castro- Togra, J	10/30/07	deny	deny	Ridore, M	7/26/07	grant	grant
Castro, F	8/30/07	deny	deny	Rivera, T	5/31/07	deny	deny
Ceesay, A	5/1/07	deny	deny	Rob, S	5/24/07	grant	deny
Ceesay, A	11/30/07	deny	deny	Rodriguez, J	5/14/07	deny	deny
Cepin, P	9/4/07	grant	grant	Rodriguez, R	9/27/07	deny	deny
Chaumette, J	9/4/07	grant	deny	Rodriguez, R	5/15/07	grant	deny

Chavarro, D	11/19/07	grant	deny	Roseme, J	5/31/07	deny	deny
Chi, C.Y.	10/19/07	deny	deny	Sacko, M	5/31/07	deny	deny
Choudhury, A	7/17/07	deny	deny	Saito, M	8/28/07	grant	deny
Chudhry	9/27/07	deny	deny	Sajed, M	7/17/07	deny	deny
Cisse, S	7/17/07	grant	deny	Salam, W	5/14/07	deny	deny
Coats, A	10/31/07	deny	deny	Saleem, R	11/28/07	deny	deny
Coglianese, J	8/22/07	grant	grant	Saleem, S	9/27/07	deny	deny
Contreras, J	10/30/07	deny	deny	Samiter, F	11/30/07	deny	deny
Cruz, H	10/30/07	deny	deny	Sanchez-Vargas, G	7/11/07	deny	deny
Cuello, C	8/21/07	deny	deny	Sanchez, A	9/6/07	grant	deny
Cuello, F	8/30/07	grant	deny	Sanchez, J	8/6/07	deny	deny
Cuervo, H	8/30/07	grant	deny	Sanoh, A	9/27/07	deny	deny
Dagrin, S	11/30/07	deny	deny	Santana, A	5/15/07	deny	deny
Daoui, R	8/30/07	deny	deny	Santana, A	11/2/07	deny	deny
Daud, M	5/2/07	grant	deny	Santana, A	11/2/07	deny	deny
Davidov, V	11/2/07	grant	deny	Santiago, L	10/31/07	grant	deny
Delacruz, L	10/30/07	deny	deny	Scheinowitz, J	8/22/07	grant	deny
Delon, B	10/31/07	deny	deny	Scott, N	10/31/07	deny	deny
Diab, K	11/2/07	grant	deny	Semextant, E	8/22/07	grant	grant
Diaby, V	7/25/07	grant	grant	Serrano, E	10/31/07	grant	deny
Diakite, Moussa	5/14/07	deny	deny	Sesay, B	7/17/07	grant	deny
Djeri, A	8/6/07	deny	deny	Sharma, A	7/25/07	grant	deny
Dominguez - Hernandez,	7/26/07	grant	deny	Sharvit, I	7/27/07	grant	deny

R							
Dossus, Y	10/30/07	deny	deny	Sheikh, A	5/1/07	grant	deny
Durango, J	11/2/07	deny	deny	Shuaib-Fawzi, A	8/6/07	deny	deny
Ekundayo, E	8/21/07	deny	deny	Siad, O	10/30/07	deny	deny
Elbashir, E	10/19/07	deny	deny	Siddique, A	11/2/07	deny	deny
Eldomyatty, H	10/31/07	deny	deny	Singh, A	10/31/07	deny	deny
Eletouhhy, A	10/31/07	grant	deny	Singh, B	10/30/07	deny	deny
Elias, R	11/27/07	grant	deny	Singh, B	11/30/07	deny	deny
Elmosbah, E	10/16/07	grant	deny	Singh, G	11/30/07	deny	deny
Encarnacion, E	9/27/07	deny	deny	Singh, H	7/17/07	deny	deny
Exil, P	11/2/07	grant	deny	Singh, K	10/31/07	deny	deny
Farhat, A	8/21/07	deny	deny	Singh, K	11/2/07	deny	deny
Fils, G	9/27/07	deny	deny	Singh, M	8/6/07	deny	deny
Foley, A	7/17/07	grant	grant	Singh, M	11/2/07	deny	deny
Franzese, R	10/31/07	grant	deny	Singh, M	11/2/07	deny	deny
Garcia, A	7/17/07	grant	grant	Singh, N	11/27/07	grant	deny
Garcia, A	7/31/07	grant	deny	Singh, S	11/2/07	grant	deny
Garcia, F	10/30/07	deny	deny	Singh, S	11/8/07	grant	grant
Garcia, R	10/31/07	deny	deny	Smadi, F	5/31/07	deny	deny
Gave, B	10/19/07	deny	deny	Smith, R	5/31/07	grant	grant
Ghulam, J	10/30/07	deny	deny	Sobzak, Z	5/2/07	grant	grant
Glaz, I	7/17/07	deny	deny	Soriano, A	5/31/07	deny	deny
Gonzabay, F	10/30/07	deny	deny	Sosa, J	9/27/07	deny	deny
Hadley, L	11/2/07	deny	deny	Sow, O	10/30/07	deny	deny

Hadley, L	11/2/07	deny	deny	Sun, H	10/24/07	grant	deny
Haji, N	10/31/07	deny	deny	Tanoh, K	11/30/07	deny	deny
Haq, N S	11/28/07	deny	deny	Tapiero, M	6/22/07	grant	deny
He, Q	7/17/07	deny	deny	Taubert, V	9/5/07	grant	deny
Hilario, P	10/30/07	deny	deny	Taveras, L	7/17/07	deny	deny
Hossain, S	7/25/07	grant	grant	Tenesela, S	9/27/07	deny	deny
Iguenaran, H	8/21/07	deny	deny	Tiburcio, J	10/30/07	deny	deny
Inga, V	6/22/07	grant	deny	Tobon, H	5/31/07	deny	deny
Islam, M	9/28/07	grant	deny	Toribio, Y	11/2/07	deny	deny
Iwouha, J	11/15/07	grant	grant	Trejos, I	7/17/07	grant	deny
Jalloh, M	9/7/07	grant	deny	Udana, S	10/23/07	grant	deny
Japra, H	5/2/07	deny	deny	Valdez-Deleon, J	10/30/07	deny	deny
Jimenez, A	10/30/07	deny	deny	Vallejo, J	10/30/07	deny	deny
Jimenez, A	10/31/07	deny	deny	Vargas, J	7/17/07	deny	deny
Kabir, M	11/2/07	deny	deny	Vargas, M	11/19/07	grant	deny
Kabir, M	11/2/07	deny	deny	Vasquez, C	7/31/07	grant	deny
Kamar, F	5/31/07	deny	deny	Veras, A	10/31/07	deny	deny
Kande, M	6/22/07	grant	deny	Vicuna, M	9/28/07	grant	deny
Khalid, M	11/15/07	grant	deny	Vugman, G	11/15/07	grant	deny
Khan, M	10/19/07	grant	deny	Wade, M	5/24/07	grant	grant
Khan, S	10/30/07	deny	deny	Waheed, M	9/6/07	grant	deny
Khelfi, N	7/17/07	deny	deny	Warunek, J	10/25/07	grant	deny
Khodier, E	8/6/07	deny	deny	Washington, G	11/15/07	grant	grant
Lazo-Puma, L	7/17/07	deny	deny	Williams, W	11/30/07	deny	deny
Mahmood, S	11/19/07	grant	grant	Wong, L	10/19/07	deny	deny

Makoveyev, V	8/28/07	grant	deny	Wu, S S	6/22/07	grant	deny
Malena, L	10/23/07	deny	deny	Xochiale, J	8/30/07	deny	deny
Mannan, A	10/31/07	grant	deny	Yeshi, L	7/17/07	deny	deny
Masood, T	5/1/07	grant	deny	Zamir, F	10/31/07	deny	deny
Mbaye, M	7/17/07	deny	deny	Zotos, E	11/28/07	deny	deny
Medrana, F	10/19/07	deny	deny				

40. In addition, the TLC produced 124 TLC ALJ decisions in reapplication cases. There was no explanation as to why there were roughly twice as many chairman rulings as there were ALJ rulings. Ackman Decl. ¶ 5.

41. The TLC assigned just three TLC ALJs—Schwartz, Yalcin and Wohlstatter—in 79 out of the 124 cases (64% of the time). Ackman Decl. ¶¶ 6-7.

42. Overall, in the ALJ Rulings the TLC produced, the ALJs recommended licensure in 47 cases (38%). But there was no consistency between ALJs. ALJ Schwartz rued for the applicant 45% of the time. ALJ Wohlstatter favored the applicant just 24% of the time. ALJ Cohen found for the applicant six times in six cases; ALJ Towers also ruled in six cases, and ruled against the applicant every time. Ackman Decl. ¶¶ 6-7. The following is a statistical summary of the ALJ recommendations:

TLC ALJ	Grant/Deny	Total	% grant	% total rulings
Schwartz	13 grant; 17 deny	30	44.8	24.2
Yalcin	8 grant; 20 deny	28	28.6	22.6
Wohlstatter	5 grant; 16 deny	21	23.8	16.9
Roberts	4 grant; 3 deny	7	57.1	5.6
Frelix	2 grant; 4 deny	6	33.3	4.8
Landis	1 grant; 5 deny	6	16.6	4.8
Towers	0 grant; 6 deny	6	0.0	4.8
Cohen	6 grant; 0 deny	6	100.0	4.8
Snyder	3 grant; 2 deny	5	60.0	4.0
Lee	2 grant; 1 deny	3	66.7	2.4

Curry	1 grant; 1 deny	2	50.0	1.6
Rivers	0 grant; 2 deny	2	0.0	1.6
Schneider	2 grant; 0 deny	2	100.0	1.6
TOTAL	47 grant; 77 deny	124	37.9	100.0

Correction
Dated: New York, NY
November 10, 2009

/s/
Daniel L. Ackman